

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

05 - 11445 DPW Civil Action No.

ROBERT GRAY,

Plaintiff,

MAGISTRATE JUDGE Sorkin

v.

TRANSPORTATION SECURITY
ADMINISTRATION, JAMES LOY IN HIS
CAPACITY AS SECRETARY OF THE
TRANSPORTATION SECURITY
ADMINISTRATION, DEPARTMENT OF
HOMELAND SECURITY, AND MICHAEL
CHERTOFF IN HIS CAPACITY AS SECRETARY OF
THE DEPARTMENT OF HOMELAND SECURITY

Defendant.

RECEIPT # 65496
AMOUNT \$ 250
SUMMONS ISSUED Y
LOCAL RULE 4.1 Y
WAIVER FORM Y
MCF ISSUED Y
BY DPTY. CLK. For
DATE 7/8/05

VERIFIED COMPLAINT

PRELIMINARY STATEMENT

Defendant Transportation Security Administration ("TSA") denied Plaintiff's request for flight training. TSA based this denial on (1) unspecified allegations from unidentified sources and (2) secret evidence that it has refused to disclose or even describe.

The reliance by TSA on secret allegations and secret evidence contravenes fundamental principles of due process and fair treatment. Neither fairness nor accuracy can be achieved by one-sided determinations of facts that trigger consequences as dramatic as those incurred by Mr. Gray. In fact, as the Supreme Court has held in relation to a different sort of system grounded on undisclosed information, "fairness can rarely be

obtained by secret, one-sided determination of facts decisive of rights Secrecy is not congenial to truth-seeking and self-righteousness gives too slender an assurance of rightness. No better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it."

Goss v. Lopez, 419 U.S. 565, 580 (1975) (quoting Joint Anti-Fascist Committee v. McGrath, 341 U.S. 123, 170 (1951) (Frankfurter, J., concurring)). In the latter case, involving governmental designation of "communist" organizations during the McCarthy Era, Justice Frankfurter eloquently emphasized that these fundamental democratic principles "should be particularly heeded at times of agitation and anxiety, when fear and suspicion impregnate the air we breathe." Id. at 171.

JURISDICTION AND VENUE

This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552a(g)(1). Venue is proper in the District of Massachusetts.

PARTIES

1. Plaintiff Robert Gray ("Gray") is a legal resident alien of the United States who holds a British passport and resides in West Yarmouth, Massachusetts.
2. Defendant Homeland Security Department ("HSD") is a department of the Executive Branch of the United States Government.
3. Defendant Michael Chertoff is the Secretary of HSD.
4. Defendant Transportation Security Administration ("TSA") is an agency of HSD.
5. Defendant James Loy is the Secretary of TSA.

STATEMENT OF FACTS

6. Gray has lived in the United States since August 1993. He has an unblemished history as a productive member of the American workforce.
7. Gray has never had any involvement whatsoever with the criminal justice system.
8. Since 1997, Gray has worked as a pilot for a number of domestic airlines, flying small commercial aircraft in the United States.
9. In or about October 2004, Gray sought to enter a new field by obtaining a position as a pilot with Executive Fliteways, Inc. ("EFI"), a charter company. This line of work would have been much more lucrative than Gray's prior work as a pilot and would have led to significant new opportunities, including opportunities created by being able to fly significant "pilot in command" jet time.
10. EFI extended to Gray an offer of employment that was conditioned on Gray obtaining authorization from TSA for training to fly larger aircraft.
11. At EFI's request, Gray filed an online application on November 3, 2004 seeking authorization from TSA to obtain training on larger aircraft from CAE SimuFlite, Inc. ("CAE"). A true and accurate copy of this application is attached hereto as Exhibit A.
12. By electronic mail message dated December 16, 2004, TSA declined to either process Gray's application or approve his request for training ("2004 Decision"). A true and accurate copy of the 2004 Decision is attached hereto as Exhibit B.
13. In this message, TSA stated that the ground for the 2004 Decision was unspecified "derogatory information" in Gray's background that TSA had obtained from unidentified sources.

14. Shortly thereafter, TSA informed EFI that the Government had identified unspecified "derogatory information" in Gray's background that TSA had obtained from unidentified sources.
15. As a direct and proximate result of the 2004 Decision, EFI was prevented from following through on its conditional offer of employment.
16. Also as a direct and proximate result of the 2004 Decision, Gray has effectively been barred from accepting any position in the field of his choice.
17. Also as a direct and proximate result of the 2004 Decision, Gray's reputation and standing within the airline industry have been substantially diminished.
18. For these reasons, the 2004 Decision substantially diminishes Gray's ability to earn his livelihood and pursue his chosen career.
19. In an electronic mail message dated January 27, 2005, TSA formally denied Gray's training request ("Denial"). A true and accurate copy of the Denial is attached hereto as Exhibit C.
20. The Denial is premised on the ground that TSA has "determined that [Gray] pose[s] a threat to aviation or national security."
21. The Denial does not identify a single fact in support of this determination.
22. The Denial further states that TSA "does not disclose classified information and reserves the right not to disclose any other information not warranting disclosure"
23. Upon information and belief, TSA provided copies of the Denial to EFI, to CAE and to Gray's current employer.

24. As a direct and proximate result of the Denial, Gray has effectively been barred from accepting any position in the field of his choice.
25. Also as a direct and proximate result of the Denial, Gray's reputation and standing within the airline industry have substantially diminished.
26. For these reasons, the Denial substantially diminishes Gray's ability to earn his livelihood and pursue his chosen career.
27. Gray timely replied to the Denial by letter dated February 22, 2005 ("Reply"). A true and accurate copy of the Reply is attached hereto as Exhibit D.
28. In the Reply, Gray requested all information, documents or data ("Records") upon which the Denial was based.
29. By letter dated March 24, 2005, TSA informed Gray that it was providing him with several documents "upon which the [D]enial was based." True and accurate copies of this letter and its enclosures are attached hereto as Exhibit E.
30. In this letter, TSA stated that it had redacted "portions of the documents containing privileged information."
31. The enclosed documents ("March 24 Documents") consisted of a copy of the Denial, a copy of a page from Gray's passport and a four-page document titled "Submitted Training Request Information."
32. Nothing in any of the three March 24 Documents suggests the existence of any fact that could plausibly justify the Denial.
33. None of the three March 24 Documents reflected any redaction.
34. By letter dated March 31, 2005, TSA produced one additional document, a computer printout captioned "TECS II - Person Subject Display" ("TECS

Printout”). True and accurate copies of this letter and its enclosure are attached hereto as Exhibit F.

35. Upon information and belief, Gray is not the subject of the TECS Printout.
36. The TECS Printout identifies its subject as “Hispanic.”
37. Gray is not Hispanic.
38. The TECS Printout identifies its subject as “Robert William Gray.”
39. Gray’s full name is “Robert William George Mulryne Gray.” The TECS Printout does not contain any reference to the middle names “George” or “Mulryne.”
40. TSA redacted portions of the TECS Printout. According to TSA’s March 31, 2005 letter, it did so to protect “portions of the document containing privileged information.”
41. Nothing in the unredacted portions of the TECS Printout suggests the existence of any fact that could plausibly justify the Denial.
42. Nothing in the unredacted portions of the TECS Printout suggests the existence of any legally recognized privilege.
43. By letter dated April 1, 2005, Gray formally challenged the sufficiency of TSA’s response to the Reply. A true and accurate copy of this letter is attached hereto as Exhibit G.
44. By letter dated April 14, 2005, TSA stated that the March 24 Documents and the TECS Printout constituted “all of the documents upon which the determination in this matter was based that TSA is authorized to release.” A true and accurate copy of this letter is attached hereto as Exhibit H.

45. By letter dated April 14, 2005, Gray timely provided formal notice to TSA of Gray's appeal of the Denial. A true and accurate copy of this letter is attached hereto as Exhibit I.
46. By letter dated May 11, 2005, TSA affirmed the Denial on the ground that Gray "poses a security threat." A true and accurate copy of this letter is attached hereto as Exhibit J.
47. This letter does not identify a single fact in support of this determination. More fully, the letter does not identify (a) any allegation upon which TSA relied, (b) the source of any such allegation or (c) any evidence that supports any such allegation.
48. As an attorney for TSA orally confirmed on May 25, 2005, Gray has exhausted his administrative remedies in connection with both the 2004 Decision and the Denial.
49. TSA's reliance on secret allegations, secret sources and secret evidence constitutes an unconstitutional deprivation of due process of law. Moreover, it creates a constitutionally unacceptable risk that an application will be denied based upon, for example, a clerical error concerning individuals with similar names, a good faith mistake by a TSA bureaucrat that an applicant could easily have corrected, and false "evidence" supplied anonymously by someone who is hostile to an applicant.
50. TSA has violated fundamental principles of due process by depriving Gray of an opportunity to learn such basic facts concerning the 2004 Decision and the Denial

as (a) the nature of any allegations upon which TSA relied, (b) the source of each such allegation and (c) the evidence that supports each such allegation.

COUNTS

COUNT I – DUE PROCESS
United States Constitution, Amendment V

51. Gray repeats and realleges each of the preceding paragraphs as if fully set forth herein.
52. Gray has liberty and property interests in his reputation, in his standing within the airline industry, in earning a livelihood and in pursuing his chosen career.
53. As set forth more fully above, TSA deprived Gray of said interests without due process of law.

COUNT II – ADMINISTRATIVE PROCEDURE ACT
5 U.S.C. § 702 et seq.

54. Gray repeats and realleges each of the preceding paragraphs as if fully set forth herein.
55. Gray has suffered a legal wrong, has been adversely affected and/or is aggrieved by both the 2004 Decision and the Denial.
56. Gray has exhausted his administrative remedies in connection with both the 2004 Decision and the Denial.
57. The 2004 Decision and the Denial were arbitrary, capricious, abuses of discretion, not in accordance with law, contrary to constitutional right, in excess of statutory authority, without observance of procedure required by law, unsupported by substantial evidence and unwarranted by the facts.

COUNT III – PRIVACY ACT
5 U.S.C. § 552a

58. Gray repeats and realleges each of the preceding paragraphs as if fully set forth herein.
59. Gray requested to gain access to the Records and to information pertaining to him that is contained in TSA's system of records.
60. TSA refused to comply with said request.

WHEREFORE, Gray respectfully requests that this Court grant the following relief:

1. Order TSA to rescind the 2004 Decision;
2. Order TSA to retract its unfounded statement that it had identified unspecified "derogatory information" in Gray's background;
3. Vacate the Denial and order TSA to approve Gray's request for training;
4. Order TSA to retract its unfounded statements that Gray "pose[s] a threat to aviation or national security" and "poses a security threat";
5. Enjoin TSA from withholding the Records and order the production of same to Gray;
6. Order Defendants to pay Gray's reasonable attorneys' fees and costs and
7. Enter such other and further relief as is just.

Respectfully submitted,

ROBERT GRAY,
By his attorneys,



Paul Holtzman, Esq.
BBO No. 563184
Hugh Dun Rappaport, Esq.
BBO No. 642263
KROKIDAS & BLUESTEIN LLP
600 Atlantic Avenue
Boston, MA 02210
(617) 482-7211




Sarah R. Wunsch, Esq.
BBO No. 548767
ACLU OF MASSACHUSETTS
99 Chauncy Street, Suite 310
Boston, MA 02111
(617) 482-3170

DATED: July 8, 2005

VERIFICATION

I, Robert Gray, hereby certify that I have read the foregoing Verified Complaint, that I have personal knowledge of the facts alleged therein, and that they are true upon my knowledge, except where stated upon information and belief, which facts I believe to be true.

Signed under the pains and penalties of perjury this 8th day of July 2005.



ROBERT GRAY

2192\0001\152805.3

Submitted Training Request Information

Training Request Information:

Training Request: 4993
Date of Request: 20041101212308
Category: 1
U.S. recognized Airman Certificate from a Foreign Country: No
Security Approved Foreign Air Carrier Employee: No
Unescorted Access to Airport Secured Areas: No
Flight Crew Member with Criminal History Check: No
TSA Approved Non-threat Class: No
Start Date: 12-06-2004
End Date: 12-15-2004
Course Number: HS 125
Name of Course: Initial New Hire
Course Description: Hawker 700

Candidate Information:

First Name: Robert
Middle Name: William George Mulryne
Last Name: Gray
Gender Code: Male
Height in inches or centimeters: 69
Weight in pounds or kilograms: 160
Measurements Type?: English
Eye Color: Blue
Hair Color: Brown
Date of Birth: 08-15-1970
Birth Date Type: Exact
Candidate has Aliases/AKAs?: No

Citizenship:

Status: Current
Country: United Kingdom
Qualification: Birth
Start Date: 08-15-1970
End Date: PRESENT

Identification:

Type of Identification: FAA Certification/Pilot Number
Identification Number: 2493720
Country: United States Of America

Date of Insertion: 11-01-2004
Start Date: 05-05-2004

Identification:

Type of Identification: Passport
Type of Identification Qualifier: Regular
Identification Number: 704248150
Status Code: Current
Country: United Kingdom
Date of Insertion: 11-01-2004
Start Date: 12-19-2001
End Date: 12-19-2011

Address:

Type: Current
Street Address 1: 193 Camp Street
Street Address 2: Apartment H3
City: West Yarmouth
State or Province: Massachusetts
Country: United States Of America
ZIP or Postal Code : 02673
Telephone Number: 321-663-5318

Address:

Type: Historical
Street Address 1: 26 Crosby Road
City: Centerville
State or Province: Massachusetts
Country: United States Of America
ZIP or Postal Code : 02632
Telephone Number: 321-663-5318

Address:

Type: Historical
Street Address 1: 4517 La Capri Court
City: Tampa
State or Province: Florida
Country: United States Of America
ZIP or Postal Code : 33611
Telephone Number: 813-831-5544

Address:

Type: Historical
Street Address 1: 4217 La Dega Court

City: Tampa
State or Province: Florida
Country: United States Of America
ZIP or Postal Code : 33611
Telephone Number: 813-831-5544

Address:

Type: Historical
Street Address 1: 345 Camp Street
Street Address 2: Apartment 302
City: West Yarmouth
State or Province: Massachusetts
Country: United States Of America
ZIP or Postal Code : 02673
Telephone Number: 321-663-5318

Employer:

Hyannis Air Service, Inc. D/B/A Cape Air
Occupation: Chief Pilot
Point of Contact Name: Stephen Phillips
Telephone Number: 508-790-3122
Email Address: sphillips@flycapeair.com
Document ID: 8875F8859/RobertGrayPassport.tif174864

Flight Training Provider Information:

Type of Provider: Part 142
School Name: CAE SimuFlite Inc.
FAA Certification Number: ST7X359K
State or Province: Texas

Address:

Type: Current
Street Address 1: 7442 East Tillman Street
City: Mesa
State or Province: Arizona
Country: United States Of America
ZIP or Postal Code : 85212

Address:

Type: Current
Street Address 1: 5000 Nw 36th Street
City: Miami
State or Province: Florida
Country: United States Of America

ZIP or Postal Code : 33122

Address:

Type: Current
Street Address 1: P.O. Box 619119
Street Address 2: 2929 West Airfield Drive
City: DFW Airport
State or Province: Texas
ZIP or Postal Code : 75261

Address:

Type: Current
Street Address 1: 4650 Diplomacy Drive
City: Fort Worth
State or Province: Texas
Country: United States Of America
ZIP or Postal Code : 76155

Telephone Number:

U.S or Non-U.S. Telephone: U.S.
Type of Telephone: Business Telephone
Telephone Number: 972-456-8180

Telephone Number:

U.S or Non-U.S. Telephone: U.S.
Type of Telephone: Business Fax
Telephone Number: 214-952-8188

-----Original Message-----

From: Geary, Steve - HQ CPO [mailto:Steve.Geary1@dhs.gov]
Sent: Thursday, December 16, 2004 12:49 PM
To: Guita McIlroy
Subject: RE: Robert William George Mulryne Gray - Training

Guita,

As confirmation of our previous conversation, TSA is unable to further process Robert Gray's application and will not grant final approval for him to receive flight training due to derogatory information. I will notify you as soon as additional information is found that will either clear or deny Mr. Gray. If you or Mr. Gray have any questions regarding this matter please contact me at (703) 542-1166. Thank You.

-----Original Message-----

From: Guita McIlroy [mailto:guita.mcilroy@cae.com]
Sent: Thursday, December 16, 2004 1:29 PM
To: 'steve.geary1@dhs.gov'
Cc: Bill Campbell; Darla Pruitt; Brian Campbell; Mike Sliva
Subject: Robert William George Mulryne Gray - Training

Robert Gray's 30 day waiting period has expired as of today and according to the new TSA ruling, he is allowed training in the Simulator. We have not received his final approval yet. Please advise.

Robert is here and is awaiting his final approval.

Regards,

Guita McIlroy

TSA/REGULATORY COMPLIANCE

OFFICE PHONE NUMBER: 972-456-8142

FAX NUMBER: 972-456-8017

gmilroy@caesimuflite.com

CAE SIMUFLITE

2929 W. AIRFIELD DRIVE

DALLAS, TX. 75261-9119

1-800-527-2463

From: afsp
Sent: Thursday, January 27, 2005 4:25 PM
To: 'rgray9k@yahoo.com'
Cc: 'atsa@caesimuflite.com'
Subject: AFSP Notification

Mr. Robert William George Mulryne Gray
193 Camp Street
Apartment H3
West Yarmouth, MA 02673

Re: Flight training request # 4993

Dear Mr. Gray:

Pursuant to Title 49, Code of Federal Regulations (CFR), §1552.3, an individual may not receive flight training at a U.S. flight school if the Transportation Security Administration (TSA) determines that the individual is a threat to aviation or national security.

Based upon materials available to TSA, which I have personally reviewed, I have determined that you pose a threat to aviation or national security. Accordingly, your training request is denied.

You may appeal this determination by serving upon TSA a written reply to this determination, or a written request for the releasable materials upon which this determination is based, within 30 days of service of this determination. TSA does not disclose classified information and reserves the right to not disclose any other information not warranting disclosure or protected from disclosure under law. Your reply must include the rationale and information on which you dispute TSA's determination. All responsive documents should be mailed to:

Steve Geary
Transportation Security Administration
Office of Transportation Vetting and Credentialing
601 South 12th Street
Arlington, VA 22202


Not later than 30 calendar days after TSA receives your written reply or request for materials, or such longer period as TSA may determine for good cause, TSA will respond. Should you have questions and/or concerns regarding this notification, please contact Steve Geary at (703) 542-1166.

Sincerely,
Tim Upham
Office of Transportation Vetting and Credentialing

KROKIDAS & BLUESTEIN

ATTORNEYS

RICHARD M. BLUESTEIN
MARIA J. KROKIDAS
SAMUEL NAGLER
JANET STECKEL LUNDBERG
ROBERT J. GRIFFIN
VINCENT J. PISEGNA
PAUL V. HOLTZMAN
ANTHONY J. CICHELO
JENNIFER GALLOP
ELKA T. SACHS


600 ATLANTIC AVENUE
BOSTON, MASSACHUSETTS 02210
PHONE 617-482-7211 • FAX 617-482-7212

HUGH DUN RAPPAPORT
JULIE A. HERBST
EMILY R. DAUGHTERS

ELIZABETH C. ROSS
LINDA R. BOSSE
BARBARA S. PARKER
OF COUNSEL

February 22, 2005

**Via Certified Mail/Return Receipt Requested
and Via UPS Second Day Air**

Steve Geary
Transportation Security Administration
Office of Transportation Vetting and Credentialing
601 South 12th Street
Arlington, VA 22202

Re: Flight Training Request # 4993

Dear Mr. Geary:

This office represents Robert William George Mulryne Gray in connection with this reply to the determination in your e-mail of January 27, 2005 that Mr. Gray poses "a threat to aviation or national security."

Mr. Gray strongly disputes said determination. Moreover, we hereby request on his behalf all information, documents or data (including but not limited to "releasable materials") upon which this determination was based.¹ Not surprisingly, until we receive such information (including the most basic of facts concerning the basis for the determination), it is difficult to provide a meaningful reply.² As a result, we must reserve the right to supplement this reply upon receipt of the requested information.

More globally, Mr. Gray objects to having to respond to what are apparently secret or undisclosed allegations or information. The most fundamental, settled principles of due process preclude the Government from proceeding in this manner since Mr. Gray is precluded from the

¹ To the extent that any documents, data or information are withheld, kindly provide a log akin to a "privilege log" specifying the form, length, source and nature of the documents, data or information at issue.

² The sum total of the information Mr. Gray has been able to obtain regarding the grounds for the decision by the Transportation Security Administration ("TSA") is a statement made to his employer by a TSA official that the Government had identified unspecified "derogatory information" in Mr. Gray's background.

KROKIDAS & BLUESTEIN LLP

Steve Geary
Transportation Security Administration
Office of Transportation Vetting and Credentialing
February 22, 2005
Page 2

opportunity to be heard in a meaningful manner if he is provided no information regarding the basis for the challenged decision. Such a procedure squarely contravenes the Fifth Amendment's prohibition on deprivation of a property interest without due process of law. In addition, the integrity and even the rationality of such a process is called into question since, without the ability to learn anything about the asserted facts underlying the decision, Mr. Gray is precluded from identifying errors, such as confusion regarding names of the sort that has been known to occur.³

Having said all this, I will provide a brief outline of Mr. Gray's longstanding, substantial connection to this country and his unblemished history as a productive member of the American workforce. Mr. Gray is a legal resident alien of the United States and holds a British passport. He has lived here since August of 1993 and is a licensed airline transport pilot in this country. Mr. Gray has worked as an airline pilot with Gulfstream International Airlines (d/b/a Continental Connection) and with Cape Air. He has had no involvement of any kind with the criminal justice system and has had a solid record of workplace contributions and reliability.

In sum, Mr. Gray is a hardworking, productive member of the American workforce caught up in what may well be a horrendous error which could easily be remedied by the provision of information indicating the basis for the erroneous determination made by the TSA.

Very truly yours,



Paul Holtzman

PH/mlf

cc: Sarah Wunsch, Esq., ACLU of Massachusetts

2192\0001\148404.1

³ As it relates to the procedures being employed in this matter, kindly forward all applicable administrative or other procedures (whether in draft or final form) governing the TSA's handling of this matter and/or providing Mr. Gray with rights of appeal or other rights including the right to inspect the evidence or information relied upon by the TSA.

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

Article Sent To:

Steve Geary, TSA, Office of
Transportation Vetting and
Postage \$.37 Credentialing

Certified Fee

2.39

Return Receipt Fee
(Endorsement Required)

1.74

Restricted Delivery Fee
(Endorsement Required)

Total Postage & Fees

\$ 4.42

Postmark
HereFEB 22 2004
USPS

Name (Please Print Clearly) (to be completed by mailer)

Transportation Security Administration

Street, Apt. No., or PO Box No.

601 South 12th Street

City, State, ZIP+4

Arlington, VA 22202-4220

PS Form 3800, July 1999

See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Steve Geary
Transportation Security
Administration
Office of Transportation
Vetting and Credentialing
601 South 12 Street
Arlington, VA 22202-4220

2. Article Number

(Transfer from service label)

7099 3400 0021 4918 2180

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

K. B. B. B.

☒ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1?

☐ Yes

If YES, enter delivery address below

☐ No

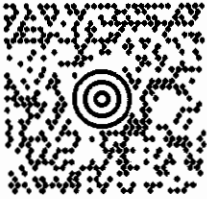



3. Service Type

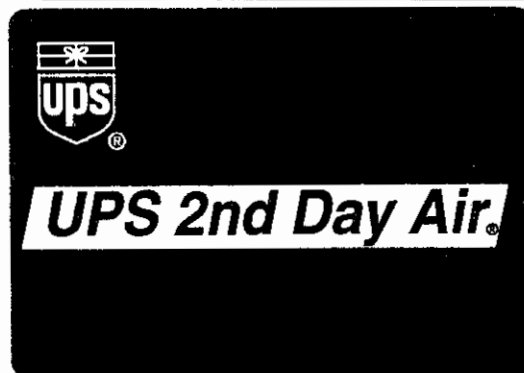
☒ Certified Mail☐ Express Mail☐ Registered☒ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

<https://www.ups.com/uis/create?ActionOriginPair=print> PrinterPage&POPUP_LEVEL=1&PrinterID=... 2/22/2005

PAUL HOLTZMAN, ESQ. 16174827211 KROKIDAS & BLUESTEIN LLP 600 ATLANTIC AVE. BOSTON MA 02210		LTR	1 OF 1
SHIP TO: STEVE GEARY TRANSPORTATION SECURITY ADMIN OFFICE OF TRANSPORTATION VETTING AND CREDENTIALING 601 SOUTH 12TH STREET ARLINGTON VA 22202-4220			
	VA 222 9-10 		
UPS 2ND DAY AIR		2	
TRACKING #: 1Z V40 9R0 02 9346 0892			
			
BILLING: P/P			
Reference#1: 2192-1		 TM	
UIS 7.0.11.0 WXPTE60 36.0A 10/2004			



U.S. Department of Homeland Security
Arlington, Virginia 22202-4220



Transportation
Security
Administration

March 24, 2005

Krokidas & Bluestein LLP

MAR 25 2005

By Federal Express

Paul Holtzman
Krokidas & Bluestein
600 Atlantic Avenue
Boston, MA 02210

Re: Denial of Flight Training for Aliens and Other Designated Individuals Pursuant to
49 C.F.R. Part 1552, Training Request 4493

Dear Mr. Holtzman:

On January 27, 2005, the Transportation Security Administration (TSA) informed Mr. Gray that his request to receive flight training (training request 4993) in the United States was denied pursuant to 49 C.F.R. Part 1552. On February 24, 2005, TSA received Mr. Gray's request, dated February 22, 2005, to obtain copies of releasable materials upon which the denial was based. This letter serves as TSA's response to the request.

Enclosed please find several documents that we are authorized to release and upon which the determination in this matter was based. Please note that we have redacted portions of the documents containing privileged information.

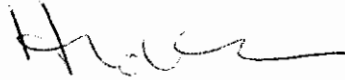
Not later than 30 calendar days after the date of service of this response, you may serve upon TSA an appeal of the instant denial of flight school training. The written appeal should include any information that you believe TSA should consider in reviewing the basis for the determination.

You may send any correspondence to the undersigned at:

Transportation Security Administration - TSA 2
TSA Headquarters - East Building
12th Floor
601 South 12th Street
Arlington, VA 22202-4220

Not later than 30 calendar days, or such longer period as TSA may determine for good cause, after TSA receives your reply, TSA will respond to the appeal.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather R. Epstein", with a long horizontal flourish extending to the right.

Heather R. Epstein
Attorney Advisor

Enc.

From: afsp
Sent: Thursday, January 27, 2005 4:25 PM
To: 'rgray9k@yahoo.com'
Cc: 'atsa@caesimuflite.com'
Subject: AFSP Notification

Mr. Robert William George Mulryne Gray
193 Camp Street
Apartment H3
West Yarmouth, MA 02673

Re: Flight training request # 4993

Dear Mr. Gray:

Pursuant to Title 49, Code of Federal Regulations (CFR), §1552.3, an individual may not receive flight training at a U.S. flight school if the Transportation Security Administration (TSA) determines that the individual is a threat to aviation or national security.

Based upon materials available to TSA, which I have personally reviewed, I have determined that you pose a threat to aviation or national security. Accordingly, your training request is denied.

You may appeal this determination by serving upon TSA a written reply to this determination, or a written request for the releasable materials upon which this determination is based, within 30 days of service of this determination. TSA does not disclose classified information and reserves the right to not disclose any other information not warranting disclosure or protected from disclosure under law. Your reply must include the rationale and information on which you dispute TSA's determination. All responsive documents should be mailed to:

Steve Geary
Transportation Security Administration
Office of Transportation Vetting and Credentialing
601 South 12th Street
Arlington, VA 22202

Not later than 30 calendar days after TSA receives your written reply or request for materials, or such longer period as TSA may determine for good cause, TSA will respond. Should you have questions and/or concerns regarding this notification, please contact Steve Geary at (703) 542-1166.

Sincerely,
Tim Upham
Office of Transportation Vetting and Credentialing

1/27/2005

Submitted Training Request Information

Training Request Information:

Training Request: 4993
Date of Request: 20041101212308
Category: 1
U.S. recognized Airman Certificate from a Foreign Country: No
Security Approved Foreign Air Carrier Employee: No
Unescorted Access to Airport Secured Areas: No
Flight Crew Member with Criminal History Check: No
TSA Approved Non-threat Class: No
Start Date: 12-06-2004
End Date: 12-15-2004
Course Number: HS 125
Name of Course: Initial New Hire
Course Description: Hawker 700

Candidate Information:

First Name: Robert
Middle Name: William George Mulryne
Last Name: Gray
Gender Code: Male
Height in inches or centimeters: 69
Weight in pounds or kilograms: 160
Measurements Type: English
Eye Color: Blue
Hair Color: Brown
Date of Birth: 08-15-1970
Birth Date Type: Exact
Candidate has Aliases/AKAs: No

Citizenship:

Status: Current
Country: United Kingdom
Qualification: Birth
Start Date: 08-15-1970
End Date: PRESENT

Identification:

Type of Identification: FAA Certification/Pilot Number
Identification Number: 2493720
Country: United States Of America
Date of Insertion: 11-01-2004
Start Date: 05-05-2004

Identification:

Type of Identification: Passport
Type of Identification Qualifier: Regular
Identification Number: 704248150
Status Code: Current
Country: United Kingdom
Date of Insertion: 11-01-2004
Start Date: 12-19-2001
End Date: 12-19-2011

Address:

Type: Current
Street Address 1: 193 Camp Street
Street Address 2: Apartment H3
City: West Yarmouth
State or Province: Massachusetts
Country: United States Of America
ZIP or Postal Code : 02673
Telephone Number: 321-663-5318

Address:

Type: Historical
Street Address 1: 26 Crosby Road
City: Centerville
State or Province: Massachusetts
Country: United States Of America
ZIP or Postal Code : 02632
Telephone Number: 321-663-5318

Address:

Type: Historical
Street Address 1: 4517 La Capri Court
City: Tampa
State or Province: Florida
Country: United States Of America
ZIP or Postal Code : 33611
Telephone Number: 813-831-5544

Address:

Type: Historical
Street Address 1: 4217 La Dega Court
City: Tampa
State or Province: Florida
Country: United States Of America

ZIP or Postal Code : 33611
Telephone Number: 813-831-5544

Address:

Type: Historical
Street Address 1: 345 Camp Street
Street Address 2: Apartment 302
City: West Yarmouth
State or Province: Massachusetts
Country: United States Of America
ZIP or Postal Code : 02673
Telephone Number: 321-663-5318

Employer:

Employer: Hyannis Air Service, Inc. D/B/A Cape Air
Occupation: Chief Pilot
Point of Contact Name: Stephen Phillips
Telephone Number: 508-790-3122
Email Address: sphillips@flycapeair.com

Faxed/Uploaded Document:

Document ID: 8875
Fax / Uploaded: Uploaded
Original File Name: F8859/RobertGrayPassport.tif
Document Type: Passport
Document Size: 74864

Flight Training Provider Information:

Type of Provider: Part 142
School Name: CAE SimuFlite Inc.
FAA Certification Number: ST7X359K
State or Province: Texas

Flight Training Provider Address:

Type: Current
Street Address 1: 7442 East Tillman Street
City: Mesa
State or Province: Arizona
Country: United States Of America
ZIP or Postal Code : 85212

Flight Training Provider Address:

Type: Current

Street Address 1: 5000 Nw 36th Street
City: Miami
State or Province: Florida
Country: United States Of America
ZIP or Postal Code : 33122

Flight Training Provider Address:

Type: Current
Street Address 1: P.O. Box 619119
Street Address 2: 2929 West Airfield Drive
City: DFW Airport
State or Province: Texas
ZIP or Postal Code : 75261

Flight Training Provider Address:

Type: Current
Street Address 1: 4650 Diplomacy Drive
City: Fort Worth
State or Province: Texas
Country: United States Of America
ZIP or Postal Code : 76155

Flight Training Provider Telephone Number:

U.S or Non-U.S. Telephone: U.S.
Type of Telephone: Business Telephone
Telephone Number: 972-456-8180

Flight Training Provider Telephone Number:

U.S or Non-U.S. Telephone: U.S.
Type of Telephone: Business Fax
Telephone Number: 214-952-8188

U.S. Department of Homeland Security
Arlington, Virginia 22202-4220



Transportation
Security
Administration

March 31, 2005

By Federal Express

Paul Holtzman
Krokidas & Bluestein
600 Atlantic Avenue
Boston, MA 02210

Re: Denial of Flight Training for Aliens and Other Designated Individuals Pursuant to
49 C.F.R. Part 1552, Training Request 4993

Dear Mr. Holtzman:

On March 24, 2005, several documents were released to you regarding Robert William George Mulryne Gray in connection with the above-referenced matter. Enclosed please find an additional document that we are authorized to release and upon which the determination in this matter was based. Please note that we have redacted portions of the document containing privileged information.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather R. Epstein", with a long horizontal flourish extending to the right.

Heather R. Epstein
Attorney Advisor

Enc.

Krokidas & Bluestein LLP

APR 01 2005

15:59

TECS II - PERSON SUBJECT DISPLAY

TID= [REDACTED]
 TECS RECORD ID [REDACTED] ENTRY [REDACTED] UPDATE 042702
 NAME- LAST GRAY PHYSICAL IDENTIFIERS
 FIRST ROBERT MID WILLIAM HISPANIC RACE SEX M HAIR EYES
 IMAGE ALIAS NICKNAME STC HT 000 WT 000 ENGLISH
 PERSONAL- S/M/T
 DOB 08151970 POB- CNTRY ST CITY CTZN MORE
 SSN 594379018 MORE AFN MORE RES EXC/SITE MORE
 PPN TYPE CNTRY ISSDT EXPDT MORE
 ADDRESS- DATE 042702 STREET 2013 IPSDEN DR APT
 CITY ORLANDO STATE FL CNTRY US ZIP 32837 TYPE MORE
 CONTACT- FAA-PILOT DIRECTORY PHONE
 OWNER FAA-AIRMAN TAPE-INTERFAC CASE NBR MORE
 PRIMARY 0 NOT ON PRIMARY START STOP QRY NTFY
 STATUS [REDACTED], PILOT FROM FAA TAPE CAT
 REMARKS- DATE 042702 MORE
 THIS DATA IS PROVIDED BY THE FAA. THE SUBJECT OF THIS RECORD IS CERTIFIED
 WITH THE FAA AS A PILOT, FLIGHT ENGINEER, OR NAVIGATOR
 [REDACTED]

NO SUB-RECORDS

STANDARDIZED ADDRESS
[REDACTED]

KROKIDAS & BLUESTEIN

ATTORNEYS



600 ATLANTIC AVENUE
BOSTON, MASSACHUSETTS 02210
PHONE 617-482-7211 • FAX 617-482-7212

RICHARD M. BLUESTEIN
MARIA J. KROKIDAS
SAMUEL NAGLER
JANET STECKEL LUNDBERG
ROBERT J. GRIFFIN
VINCENT J. PISEGNA
PAUL V. HOLTZMAN
ANTHONY J. CICHELO
JENNIFER GALLOP
ELKA T. SACHS

HUGH DUN RAPPAPORT
JULIE A. HERBST
EMILY R. DAUGHTERS

ELIZABETH C. ROSS
LINDA R. BOSSE
BARBARA S. PARKER
OF COUNSEL

April 1, 2005

**Via First Class Mail and
Certified Mail/Return Receipt Requested
7099 3400 0020 7519 9153**

Heather R. Epstein
Attorney Advisor
Transportation Security Administration – TSA 2
TSA Headquarters – East Building, 12th Floor
601 South 12th Street
Arlington, VA 22202-4220

Re: Training Request 4493 (Robert Gray)¹

Dear Attorney Epstein:

I am in receipt of your letter of March 24, 2005. It appears that you have responded to that portion of my letter of February 22, 2005 requesting copies of the documents or information upon which the challenged denial of flight training was based.² While your letter makes reference to “several” enclosed documents “upon which the denial was based,” the only documents enclosed with the letter were (a) a copy of the January 27, 2005 email conveying the initial denial of flight training; (b) a copy of a page from Mr. Gray’s passport; and (c) a four-page document titled “Submitted Training Request Information.”

Because nothing in any of these three documents even begins to suggest information of an adverse nature which could plausibly justify the denial at issue, I would request that you confirm that we received the proper documents. This request for confirmation is further

¹ Please note that the caption on your letter appears to have erroneously listed the Training Request number as 4493 rather than 4993.

² I say that it appears that that is the purpose of your letter because the third paragraph refers to the “instant denial of flight school training.” I am assuming that that language was mistakenly included. However, if I am mistaken, please advise and please note that Mr. Gray reserves all his rights to challenge the previously communicated denial of his request for flight training.

KROKIDAS & BLUESTEIN LLP

Heather R. Epstein
Attorney Advisor
Transportation Security Administration – TSA 2
April 1, 2005
Page 2

necessitated by the reference in your letter to the TSA having redacted portions of the documents, since none of the three documents enclosed reflects any redactions.

If these are in fact the documents which constitute the agency's response to our February 22, 2005 request, please consider this letter a formal appeal or challenge to the sufficiency of the agency's response to our request for documents and information.

In any event, I am hopeful that you might contact me by telephone so that we might make an effort to promptly resolve this matter. The concern that I expressed in my letter of February 22, 2005 that Mr. Gray may be the victim of an erroneous determination based on a confusion of names or some other easily remediable error is enhanced in light of the absence of any basis for the challenged decision in the documents you have provided.

I will look forward to speaking with you.

Very truly yours,



Paul Holtzman

PH/mlf

U.S. Postal Service

CERTIFIED MAIL RECEIPT

(Domestic Mail Only; No Insurance Coverage Provided)

Article Sent To:

Heather R. Epstein
Transportation Security Administration

Postage \$.37

Certified Fee 2.30

Return Receipt Fee
(Endorsement Required) 1.75Restricted Delivery Fee
(Endorsement Required)

Total Postage & Fees \$ 4.42

Postmark

Here

APR 1 2005

BOSTON

Name (Please Print Clearly) (to be completed by addressee)

Heather R. Epstein, Security Admin

Street, Apt. No., or PO Box No.

601 South 12th St., East Bldg. 12th Fl

City, State, ZIP+4

Arlington, VA 22202-4220

PS Form 3800, July 1999

See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Heather R. Epstein
Attorney Advisor
Transportation Security
Administration - TSA 2
TSA Headquarters - East
Building, 12th Floor
601 South 12th Street
Arlington, VA 22202-4220

2. Article Number

(Transfer from service label)

7099 3400 0020 7519 9153

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☒ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail☐ Express Mail☐ Registered☒ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

U.S. Department of Homeland Security
Arlington, Virginia 22202-4220



Transportation
Security
Administration

April 14, 2005

By Facsimile

Paul Holtzman
Krokidas & Bluestein
600 Atlantic Avenue
Boston, MA 02210

Re: Denial of Flight Training for Aliens and Other Designated Individuals Pursuant to
49 C.F.R. Part 1552

Dear Mr. Holtzman:

I am in receipt of your letter dated April 1, 2005. On March 24 and 31, 2005, you were forwarded all of the documents upon which the determination in this matter was based that TSA is authorized to release.

If you wish to serve TSA with an appeal regarding the denial of Mr. Gray's flight training, you must do so no later than April 24, 2005.

You may send any correspondence to the undersigned at:

Transportation Security Administration - TSA 2
TSA Headquarters - East Building
12th Floor
601 South 12th Street
Arlington, VA 22202-4220

Sincerely,

A handwritten signature in black ink, appearing to read "Heather R. Epstein".

Heather R. Epstein
Attorney Advisor


Krokidas & Bluestein LLP

APR 14 2005

KROKIDAS & BLUESTEIN

ATTORNEYS

RICHARD M. BLUESTEIN
MARIA J. KROKIDAS
SAMUEL NAGLER
JANET STECKEL LUNDBERG
ROBERT J. GRIFFIN
VINCENT J. PISEGNA
PAUL V. HOLTZMAN
ANTHONY J. CICHELLO
JENNIFER GALLOP
ELKA T. SACHS


600 ATLANTIC AVENUE
BOSTON, MASSACHUSETTS 02210
PHONE 617-482-7211 • FAX 617-482-7212

HUGH DUN RAPPAPOORT
JULIE A. HERBST
EMILY R. DAUGHTERS

ELIZABETH C. ROSS
LINDA R. BOSSE
BARBARA S. PARKER
OF COUNSEL

April 14, 2005

**Via First Class Mail and
Certified Mail/Return Receipt Requested**

Heather R. Epstein
Attorney Advisor
Transportation Security Administration – TSA 2
TSA Headquarters – East Building, 12th Floor
601 South 12th Street
Arlington, VA 22202-4220

Re: Training Request 4493 (Robert Gray)

Dear Attorney Epstein:

I am in receipt of your letter of April 14, 2005. This will constitute formal notice of Mr. Gray's appeal of the denial by the Transportation Security Administration ("TSA") of his flight training request. In support of the appeal, I would respectfully refer you to the enclosed letter of February 22, 2005 to Steve Geary which was initially served as our reply to the determination as provided for in the January 27, 2005 e-mail from Tim Upham, Office of Transportation Vetting and Credentialing, denying the flight training request.

In further support of the appeal, I would point to an example of what may well be an instance of confusion of identities of the sort alluded to in my letter of February 22, 2005. Specifically, the single substantive document provided (albeit in a redacted form) is a TECS II printout which appears to refer to a William Robert Gray who is "Hispanic." As you will note from Mr. Gray's British passport, he is not Hispanic. Moreover, the unredacted portions of the document provide no information of any kind suggestive of a legitimate basis for the denial of flight training.

More globally, we object to the procedure employed by TSA which precludes Mr. Gray from learning the most basic of information concerning the basis for the adverse action taken against him. It is simply impossible to test or challenge the basis for the agency's action when the agency declines to identify even in broad strokes the nature of the asserted basis.

KROKIDAS & BLUESTEIN LLP

Heather R. Epstein
Attorney Advisor
Transportation Security Administration – TSA 2
April 14, 2005
Page 2

Finally, I would renew our request for production (or at a minimum itemization) of any additional documents or information upon which the determination was made, including but not limited to an unredacted version of the TECS II printout provided with your letter of March 31, 2005. Absent such production, the concern that I expressed in my letter of February 22, 2005 that Mr. Gray may be the victim of an erroneous determination based on a confusion of names or some other easily remediable error remains.

I will look forward to speaking with you if there is any additional information or documentation that you are able to provide.

Thank you for your attention to this matter.

Very truly yours,



Paul Holtzman

PH/mlf
Enclosure

cc: Sarah Wunsch, Esq.
ACLU of Massachusetts
99 Chauncy Street, Suite 310
Boston, MA 02111

KROKIDAS & BLUESTEIN

ATTORNEYS

RICHARD M. BLUESTEIN
MARIA J. KROKIDAS
SAMUEL NAGLER
JANET STECKEL LUNDBERG
ROBERT J. GRIFFIN
VINCENT J. PISEGNA
PAUL V. HOLTZMAN
ANTHONY J. CICHELLO
JENNIFER GALLOP
ELKA T. SACHS

600 ATLANTIC AVENUE
BOSTON, MASSACHUSETTS 02210
PHONE 617-482-7211 • FAX 617-482-7212

HUGH DUN RAPPAPORT
JULIE A. HERBST
EMILY R. DAUGHTERS
ELIZABETH C. ROSS
LINDA R. BOSSE
BARBARA S. PARKER
OF COUNSEL

February 22, 2005

**Via Certified Mail/Return Receipt Requested
and Via UPS Second Day Air**

Steve Geary
Transportation Security Administration
Office of Transportation Vetting and Credentialing
601 South 12th Street
Arlington, VA 22202

Re: Flight Training Request # 4993

Dear Mr. Geary:

This office represents Robert William George Mulryne Gray in connection with this reply to the determination in your e-mail of January 27, 2005 that Mr. Gray poses "a threat to aviation or national security."

Mr. Gray strongly disputes said determination. Moreover, we hereby request on his behalf all information, documents or data (including but not limited to "releasable materials") upon which this determination was based.¹ Not surprisingly, until we receive such information (including the most basic of facts concerning the basis for the determination), it is difficult to provide a meaningful reply.² As a result, we must reserve the right to supplement this reply upon receipt of the requested information.

More globally, Mr. Gray objects to having to respond to what are apparently secret or undisclosed allegations or information. The most fundamental, settled principles of due process preclude the Government from proceeding in this manner since Mr. Gray is precluded from the

¹ To the extent that any documents, data or information are withheld, kindly provide a log akin to a "privilege log" specifying the form, length, source and nature of the documents, data or information at issue.

² The sum total of the information Mr. Gray has been able to obtain regarding the grounds for the decision by the Transportation Security Administration ("TSA") is a statement made to his employer by a TSA official that the Government had identified unspecified "derogatory information" in Mr. Gray's background.

KROKIDAS & BLUESTEIN LLP

Steve Geary
Transportation Security Administration
Office of Transportation Vetting and Credentialing
February 22, 2005
Page 2

opportunity to be heard in a meaningful manner if he is provided no information regarding the basis for the challenged decision. Such a procedure squarely contravenes the Fifth Amendment's prohibition on deprivation of a property interest without due process of law. In addition, the integrity and even the rationality of such a process is called into question since, without the ability to learn anything about the asserted facts underlying the decision, Mr. Gray is precluded from identifying errors, such as confusion regarding names of the sort that has been known to occur.³

Having said all this, I will provide a brief outline of Mr. Gray's longstanding, substantial connection to this country and his unblemished history as a productive member of the American workforce. Mr. Gray is a legal resident alien of the United States and holds a British passport. He has lived here since August of 1993 and is a licensed airline transport pilot in this country. Mr. Gray has worked as an airline pilot with Gulfstream International Airlines (d/b/a Continental Connection) and with Cape Air. He has had no involvement of any kind with the criminal justice system and has had a solid record of workplace contributions and reliability.

In sum, Mr. Gray is a hardworking, productive member of the American workforce caught up in what may well be a horrendous error which could easily be remedied by the provision of information indicating the basis for the erroneous determination made by the TSA.

Very truly yours,



Paul Holtzman

PH/mlf

cc: Sarah Wunsch, Esq., ACLU of Massachusetts

2192\0001\148404.1

³ As it relates to the procedures being employed in this matter, kindly forward all applicable administrative or other procedures (whether in draft or final form) governing the TSA's handling of this matter and/or providing Mr. Gray with rights of appeal or other rights including the right to inspect the evidence or information relied upon by the TSA.

U.S. Postal Service
CERTIFIED MAIL RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

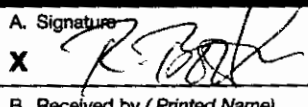
Article Sent To:
 Heather R. Epstein

Postage	\$ 1.60
Certified Fee	2.30
Return Receipt Fee (Endorsement Required)	1.75
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 4.65

Name (Please Print Clearly) (to be completed by mailer)
 Transportation Security Administration
 Street, Apt. No., or PO Box No. East Bldg, 12th Fl
 601 South 12th Street
 City, State, ZIP+4
 Arlington, VA 22202-4220

PS Form 3800, July 1999 See Reverse for Instructions

2192-1

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature  <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) C. Date of Delivery</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> <p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>1. Article Addressed to:</p> <p>Heather R. Epstein Attorney Advisor Transportation Security Administration -- TSA-2 Headquarters, East Bldg, 12th Fl 601 South 12th Street Arlington, VA 22202-4220</p>	<p>2. Article Number (Transfer from service label) 7099 3400 0020 7519 9146</p>

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

U.S. Department of Homeland Security
Arlington, Virginia 22202-4220



Transportation
Security
Administration

MAY 11 2005

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Paul Holtzman
Krokidas & Bluestein
600 Atlantic Avenue
Boston, MA 02210

Re: Denial of Flight Training for Aliens and Other Designated Individuals Pursuant to 49
C.F.R. Part 1552

Dear Mr. Holtzman:

On January 27, 2005, the Transportation Security Administration informed your client, Robert Gray, that his request to receive flight training in the United States was denied pursuant to 49 C.F.R. Part 1552. Mr. Gray made a timely request to obtain copies of releasable materials upon which the denial was based and provided information to appeal the denial. After receiving the releasable materials, Mr. Gray supplemented his appeal.

After personally reviewing the denial and other information and materials available to TSA, I have determined that Mr. Gray poses a security threat and the denial of Mr. Gray's flight school training was appropriate.

Sincerely,

A handwritten signature in black ink, appearing to read "Rodney W. Turk".

Rodney W. Turk
Assistant Administrator
Office of Transportation Vetting and Credentialing

Krokidas & Bluestein LLP

MAY 16 2005

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Robert Gray vs. Transportation Security Administration, et al
2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).
- ☐ I. 160, 410, 470, 535, R.23, REGARDLESS OF NATURE OF SUIT.
- ☒ II. 195, 196, 368, 400, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950.
- ☐ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 480, 490, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.
3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.
4. Has a prior action between the same parties and based on the same claim ever been filed in this court?
YES ☐ NO ☒
5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)
YES ☐ NO ☒
If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?
YES ☐ NO ☐
6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?
YES ☐ NO ☒
7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).
YES ☒ NO ☐
- A. If yes, in which division do all of the non-governmental parties reside?
Eastern Division ☒ Central Division ☐ Western Division ☐
- B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?
Eastern Division ☐ Central Division ☐ Western Division ☐
8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)
YES ☐ NO ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Hugh Dun Rappaport, Esq.ADDRESS Krokidas & Bluestein LLP, 600 Atlantic Avenue, Boston, MA 02210TELEPHONE NO. (617) 482-7211

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS**Robert Gray**

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
(see over)

DEFENDANTS Transportation Security Administration, James Loy in his capacity as Secretary of the Transportation Security
(see over)

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ 1 PTF ☐ 1 DEF Incorporated or Principal Place of Business In This State ☐ 4 PTF ☐ 4 DEF
- Citizen of Another State ☐ 2 PTF ☐ 2 DEF Incorporated and Principal Place of Business In Another State ☐ 5 PTF ☐ 5 DEF
- Citizen or Subject of Foreign Country ☐ 3 PTF ☐ 3 DEF Foreign Nation ☐ 6 PTF ☐ 6 DEF

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FOREIGN/INJURY/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Medical Practice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): **Administrative Procedure Act, 5 U.S.C. §702 et seq.; Privacy Act, 5 U.S.C. §552a**

Brief description of cause:

Challenge to unlawful denial of flight training.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

7-8-05

SIGNATURE OF ATTORNEY OF RECORD

Thad P. R.

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

DEFENDANTS (Cont'd)

Administration, Department of Homeland Security, and Michael Chertoff in his capacity as secretary of the Department of Homeland Security

PLAINTIFFS

(c) Attorney's (Firm Name, Address, and Telephone Number)

**Paul Holtzman, Esq. (BBO # 563184)
Hugh Dun Rappaport, Esq. (BBO # 642263)
KROKIDAS & BLUESTEIN LLP
600 Atlantic Avenue
Boston, MA 02210
(617) 482-7211**

**Sarah R. Wunsch, Esq. (BBO # 548767)
ACLU OF MASSACHUSETTS
99 Chauncy Street, Suite 310
Boston, MA 02111
(617) 482-3170**